

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO.341 OF 2006
IN
SUMMARY SUIT NO.3880 OF 1998

Tej Gaurav Finance Ltd.

...Plaintiffs

v/s

Naresh H. Sheth

...Defendant

Mr K.H. Mody i/b M/s Vinod Mistry and Co. for
Plaintiffs.

Mr D.H. Mehta with Mr Kode i/b Mr Y.I. Yagnik for
Defendant.

CORAM : D.K. DESHMUKH J.

DATE : 7TH NOVEMBER 2006.

P.C. :-

1. The plaintiffs have filed this suit on the basis of four deeds of guarantee which according to the plaintiffs were executed by the defendant. The deeds of guarantee themselves state that these deeds are being executed by the defendant because the plaintiffs had advanced loan to a Company called Sarigam Seamless Pipes Ltd. It appears that the shares of that Company were pledged with the plaintiffs as security for the loan. It appears that as the loan was not paid in time, the plaintiffs by letter dated 1st September 1995 informed the defendant that they have transferred the shares in their own name. Thereafter, the plaintiffs issued a demand notice dated 20th February 1998 to the defendant. What is interesting is in that demand notice, there is no reference to the pledge of the shares, there is no reference to the letter of the plaintiffs dated 1st September 1995 that the pledged shares have been transferred by the plaintiffs in its own name. Now if the pledged shares have been transferred by the plaintiffs in its own name, the consideration for the transfer would either be the entire loan amount or at least a part of the loan amount. Though the plaintiffs claim that they have transferred the shares to itself, it has not given any credit to the Company. According

to the plaintiffs, it was a secured loan because the shares were transferred. The security was realised by transferring the shares in the name of the plaintiff itself. The learned counsel appearing for plaintiffs submitted before me that the plaintiffs are willing to give up the security. Now after having got the shares transferred in its own name, it is doubtful whether the plaintiffs can claim to give up the security now. If the shares are transferred in the name of plaintiffs, they cease to remain as security. The defendants have substantial defences to offer and therefore, they are entitled for unconditional leave to defend the suit. Summons for judgment is disposed off, defendants are granted unconditional leave to defend the suit. Written statement to be filed within eight weeks from today.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.
